

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JUAN GARCIA, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO.: 5:17-cv-1127
§
AMERICAN SECURITY INSURANCE §
COMPANY, §
§
Defendant. §

NOTICE OF REMOVAL

Defendant American Security Insurance Company (“American Security”) files this Notice of Removal against Plaintiff Juan Garcia (“Plaintiff”) pursuant to 28 U.S.C. Sections 1441 and 1446, as follows:

I. COMMENCEMENT AND SERVICE

1. On August 31, 2017, Plaintiff commenced this action by filing an Original Petition (“Original Petition”) in the 438th Judicial District Court of Bexar County, Texas, styled Cause No. 2017CI16614; *Juan Garcia v. American Security Insurance Company*.¹
2. American Security was served October 6, 2017.²
3. American Security filed an answer in state court on October 30, 2017.³
4. This Notice of Removal is filed within thirty days of the receipt of service of process and is timely filed under 28 U.S.C. § 1446(b).⁴ This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

¹ See Exhibit A, Plaintiff’s Original Petition.

² See Exhibit B, Executed Process.

³ See Exhibit C, Defendant’s Original Answer.

⁴ See Exhibit B, Executed Process.

II. GROUNDS FOR REMOVAL

5. American Security is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

III. DIVERSITY OF CITIZENSHIP

6. This is an action with complete diversity of citizenship between Plaintiff and Defendant.

7. Plaintiff is a citizen of Texas.⁵

8. Defendant American Security is a foreign insurance company.⁶

9. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the proper parties.

IV. AMOUNT IN CONTROVERSY

10. A defendant who is served with a pleading requesting an indeterminate amount of damages has two options. The defendant may (1) remove the case immediately, if it can reasonably conclude that the amount in controversy exceeds \$75,000.00, or (2) the defendant may wait until the plaintiff expressly pleads that the amount in controversy exceeds that amount or serves some “other paper” indicating that the amount in controversy exceeds that amount. U.S.C. § 1446(b)(3); U.S.C. § 1446(c)(3)(A); *Bosky v. Kroger Texas LP*, 288 F.3d 208, *passim* (5th. Cir. 2002). Here, this case became removable upon the service of Plaintiff’s Original Petition wherein Plaintiff asserted that he seeks monetary relief over \$100,000.00.⁷ Furthermore,

⁵ See Exhibit A, Plaintiff’s Original Petition, at p. 1; Exhibit. D-1, Accurint Comprehensive Address Report (demonstrating that Plaintiff has resided in Texas, at least, since 1995).

⁶ See Exhibit E, Affidavit of Carmen Collazo.

⁷ See Exhibit A, Plaintiff’s Original Petition, at p. 10.

on June 6, 2017, Plaintiff served American Security with a demand letter seeking \$185,596.68.⁸ Accordingly, Plaintiff's Original Petition and demand establish that the total amount in controversy in the action exceeds the sum of \$75,000.00, and this Court has jurisdiction under 28 U.S.C. § 1332.

V. VENUE

11. Venue lies in the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the state court action in this judicial district and division.

VI. CONSENT TO REMOVAL

12. No Consent to Removal is necessary as American Security is the only named defendant in this lawsuit.

VII. NOTICE

13. Defendant will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon Plaintiff's counsel, a notice of the filing of this Notice of Removal.

VIII. STATE COURT PLEADINGS

14. Copies of all state court pleadings and orders are attached to this Notice of Removal.

IX. EXHIBITS TO NOTICE OF REMOVAL

15. The following documents are attached to this Notice as corresponding numbered exhibits:

A. Plaintiff's Original Petition;

B. All Executed Process in this case;

⁸ Exhibit F, June 6, 2017 Demand Letter, at p. 2.

- C. American Security Insurance Company's Original Answer;
- D. Affidavit of Bradley Aiken;
- 1. Accurint Comprehensive Address Report for Juan Garcia;
- E. Affidavit of Carmen Collazo;
- F. Demand Letter
- G. Docket Sheet
- H. Civil Cover Sheet

X. CONCLUSION

WHEREFORE, Defendant American Security Insurance Company, pursuant to the statutes cited herein, removes this action from the 438th Judicial District Court of Bexar County, Texas to this Court.

Dated: November 3, 2017

Respectfully submitted,

EDISON, McDOWELL & HETHERINGTON LLP

By: /s/ Bradley J. Aiken

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on November 3, 2017, on the following counsel of record by certified mail:

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